

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:)	CASE NO.: 10-81228
TROY LEE COCKERHAM, JR. and)	
ALIDA JANTINA COCKERHAM,)	
Debtors)	CHAPTER 13

MOTION FOR RELIEF FROM AUTOMATIC STAY

Bank of America, N.A. (“Bank of America”), by and through counsel, pursuant to 11 U.S.C. § 362, hereby moves for an order granting Bank of America relief from the automatic stay to exercise remedies against its collateral, and in the alternative, adequate protection, and in support hereof represents to the Court the following:

1. On or about July 13, 2010, Troy and Alida Cockerham (the “Debtors”) filed a petition for relief under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of North Carolina, Durham Division.

2. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157 and 1334. The motion is brought under the provisions of 11 U.S.C. § 362(d) and Rule 4001 of the Federal Rules of Bankruptcy Procedure. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(G), which this Court may hear and determine.

3. Bank of America is the holder of a Consumer Credit Installment Sale Contract, Security Agreement and Disclosure Statement dated October 31, 2006 (“Agreement”), pursuant to which the Debtors received financing in the original principal amount of \$131,832.51, and wherein the Debtors promised to pay, among other amounts (including but not limited to applicable late charges), the principal amount, plus interest. A copy of pertinent provisions of the Agreement is attached hereto as Exhibit “A” and incorporated herein.

4. Bank of America’s claim arising out of the Agreement is secured by a duly perfected security interest in a 2005 Coachman, VIN # 4UZAABV75CV37300, owned by the Debtors, as noted on the North Carolina Certificate of Title, a copy of which is attached hereto as Exhibit “B” and incorporated herein.

5. Pursuant to the Agreement, the Debtors are obligated to make monthly payments to Bank of America in the amount of \$1,082.28 by the 30th day of each month. As of July 26, 2010, the balance due on the Agreement was \$131,608.55.

6. Upon information and belief, there is no equity in the recreational vehicle. According to the Debtors’ bankruptcy schedules, the Debtors value the recreational vehicle at \$35,000.00.

7. Upon information and belief, the Debtors intend to surrender the vehicle, as the

vehicle was repossessed prepetition, and therefore there is sufficient cause for this Court to modify the automatic stay in accordance with 11 U.S.C. § 362(d).

WHEREFORE, Bank of America respectfully requests that this Court, after notice and an opportunity to be heard:

1. Modify the automatic stay provisions of § 362 of the Bankruptcy Code, and allow Bank of America to foreclose its security interest in the Debtors' 2005 Coachman, VIN # 4UZAABV75CV37300, and to otherwise pursue any remedy available to it at state law.

2. Provide that the order granting relief from stay be without prejudice to Bank of America, and that the order allow Bank of America to file an unsecured deficiency claim within one hundred twenty days from the date of the order confirming the chapter 13 plan.

3. Provide that the order granting this motion be exempt from the fourteen (14) day stay period contained within Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

4. Alternatively, in the event the stay is not modified, provide that Bank of America be provided adequate protection, and include a provision that automatically provides relief from the stay without further notice or hearing in the event the Debtor fails to comply with the order entered in this matter.

5. Provide for such other and further relief as this Court deems proper.

This the 29th day of July 2010.

s/ Cindy G. Oliver
N.C. State Bar # 14258
Attorney for Bank of America, N.A.
OLIVER & OLIVER, PLLC
Post Office Box 10349
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(919) 719-3340

CERTIFICATE OF SERVICE

I, Cindy G. Oliver, of OLIVER & OLIVER, PLLC, certify:

That I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age;

That on this date, I mailed a copy of the foregoing **Motion For Relief From Automatic Stay** by depositing copies thereof in the United States mail, postage prepaid, in an envelope addressed as shown below:

Richard M. Hutson, II
P.O. Box 3613
Durham, North Carolina 27702

Trustee

John T. Orcutt
6616 Six Forks Road, Suite 203
Raleigh, North Carolina 27615

Attorney for Debtors

Troy & Alida Cockerham
901 Delray St.
Durham, North Carolina 27713

Debtors

I certify under penalty of perjury that the foregoing is true and correct.

This the 29th day of July 2010.

s/ Cindy G. Oliver
N.C. State Bar # 14258
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